

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

TOMMY T. PORTER and  
SIDNEY N. LANGLEY,

Plaintiffs,

Case No. 21-12842

v.

Honorable Nancy G. Edmunds

UNITED STATES DISTRICT  
COURT, *et al.*,

Defendants.

---

**ORDER DENYING “MOTION TO APPEAL CLOSED CASE” [11]**

On January 28, 2022, Plaintiffs were granted in forma pauperis status and this pro se civil rights lawsuit was dismissed for failure to state a claim upon which relief can be granted. (ECF Nos. 6, 7.) On May 26, 2022, Plaintiffs’ motion to alter or amend the judgment was denied. (ECF No. 10.) Over one year later, on August 1, 2023, Plaintiff Tommy Porter filed the present “motion to appeal closed case.” (ECF No. 11.) For the reasons below, the Court DENIES this motion.<sup>1</sup>

Plaintiff does not invoke any particular rule or statute as the basis for his motion. Instead, he appears to take issue with the fact that the named defendants did not file an answer to his complaint. The complaint, however, was dismissed prior to service. See 28 U.S.C. § 1915(e)(2) (instructing the Court to dismiss a case filed in forma pauperis “at any time” if the case fails to state a claim on which relief may be granted). And to the

---

<sup>1</sup> The previous orders were issued by the Honorable Robert H. Cleland, but the case has since been reassigned to the Honorable Nancy G. Edmunds pursuant to Administrative Order 23-AO-035.

extent Plaintiff seeks reconsideration of the dismissal of this action, his motion is subject to denial for the same reasons Plaintiffs' previous motion to amend was denied. (See ECF No. 10.)

Finally, if the motion were to be construed as a request to extend or reopen the time to appeal, the Court finds that Plaintiff is not entitled to relief. Under both 28 U.S.C. § 2107(c) and Federal Rule of Appellate Procedure 4(a)(5), the district court may, on motion filed no later than thirty days after the time to appeal has expired, extend the time to appeal upon a showing of good cause or excusable neglect. Plaintiff's motion was filed well outside the applicable timeframe, and Plaintiff has not even attempted to make the required showing. Federal Rule of Appellate Procedure 4(a)(6) permits the Court to reopen the time to appeal if certain conditions are satisfied, including that the moving party did not receive timely notice of the entry of the order to be appealed and that the motion to reopen was filed before the earlier of "180 days after the . . . order is entered or within 14 days after the moving party receives notice" of the entry. But those requirements are not met here. First, the record shows that Plaintiffs received timely notice of both the dismissal order and the order denying the motion to amend judgment. And this motion was filed outside the applicable timeframe.

For the foregoing reasons, Plaintiff's motion to appeal is DENIED.

SO ORDERED.

s/Nancy G. Edmunds  
Nancy G. Edmunds  
United States District Judge

Dated: September 18, 2023

I hereby certify that a copy of the foregoing document was served upon counsel of record on September 18, 2023, by electronic and/or ordinary mail.

s/Lisa Bartlett  
Case Manager